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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**JOINT SUBMISSION IN RESPONSE TO  
DKTS. 437 AND 438 RE: SEALING  
PORTIONS OF MARCH 1, 2022 ORDER**

Referral: Hon. Susan van Keulen, USMJ

1 March 8, 2022

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen  
4 San Jose Courthouse  
5 Courtroom 6 - 4th Floor  
6 280 South 1st Street  
7 San Jose, CA 95113

8 Re: Joint Submission in Response to Dkts. 437 and 438 re: Sealing Portions of March  
9 1, 2022 Order Following February 28, 2022 Discovery Hearing  
10 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)

11 Dear Magistrate Judge van Keulen:

12 Pursuant to Your Honor's March 1, 2022 Redaction Order re: sealing portions of March 1,  
13 2022 Order Following February 28, 2022 Discovery Hearing, Plaintiffs and Google LLC ("Google")  
14 jointly submit this statement.  
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Google respectfully seeks to seal the following portions of Exhibit A of the March 1, 2022 Order Following February 28, 2022 Discovery Hearing (“Order”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including details related to internal projects, identifiers, cookies, data field, and logs and their proprietary functionalities, internal investigations of features, and personal and private information related to a Google employee, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. Google previously sought to seal most of the same information in Docket No. 459. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Order:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Exhibit A of Order	Portions highlighted in yellow at:  Pages 3-4, 6-7, 10-13, 16-17, 20, 21	Google

The parties conferred on the proposed redactions to the Order. Plaintiffs take no position on sealing the proposed redactions except for the proposed redactions on pages 20 and 21, which Plaintiffs support.

#### **I. LEGAL STANDARD**

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at \*4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of

1 information, including, but not limited to, trade secrets or other confidential research, development, or  
 2 commercial information”).

3 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”**  
 4 **STANDARD AND SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain medical  
 6 information or “business information that might harm a litigant’s competitive standing.” *Nixon*, 435  
 7 U.S. at 589-99; *see also Turner v. United States*, 2019 WL 4732143, at \*9 (finding good cause to seal  
 8 “confidential medical information”). Good cause to seal is shown when a party seeks to seal materials  
 9 that “contain[ ] confidential information about the operation of [the party’s] products and that public  
 10 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of*  
 11 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Materials that  
 12 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”  
 13 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at \*2  
 14 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’  
 15 standard where that information could be used to the company’s competitive disadvantage”) (citation  
 16 omitted).

17 Here, Exhibit A of the Order comprises confidential information regarding highly sensitive  
 18 features of Google’s internal systems and operations that Google does not share publicly. Specifically,  
 19 this information provides details related to internal projects, identifiers, cookies, data field, and logs  
 20 and their proprietary functionalities, internal investigations of features, and personal and private  
 21 information related to a Google employee. Such information reveals Google’s internal strategies,  
 22 system designs, and business practices for operating and maintaining many of its important services  
 23 while complying with legal and privacy obligations.

24 Public disclosure of the above-listed information would harm Google’s competitive standing it  
 25 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of  
 26 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is  
 27 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-  
 28 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain

1 sensitive business information related to Google’s processes and policies to ensure the integrity and  
2 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-  
3 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because  
4 “disclosure would harm their competitive standing by giving competitors insight they do not have”);  
5 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at \*8 (W.D. Wash. May 8, 2013) (granting  
6 motion to seal as to “internal research results that disclose statistical coding that is not publically  
7 available”).

8       Moreover, if publicly disclosed, malicious actors may use such information to seek to  
9 compromise Google’s internal systems and data structures. Google would be placed at an increased  
10 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*  
11 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at \*3 (N.D. Cal. Sept. 25, 2013) (sealing “material  
12 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”  
13 because if made public, it “could lead to a breach in the security of the Gmail system”). The security  
14 threat is an additional reason for this Court to seal the identified information. The information Google  
15 seeks to redact, internal projects, identifiers, and cookies, and their proprietary functionalities, is the  
16 minimal amount of information needed to protect its internal systems and operations from being  
17 exposed to not only its competitors but also to nefarious actors who may improperly seek access to  
18 and disrupt these systems and operations. The “good cause” rather than the “compelling reasons”  
19 standard should apply but under either standard, Google’s sealing request is warranted.

### 20 **III. CONCLUSION**

21       For the foregoing reasons, Google respectfully requests that the Court seal the identified portions  
22 of Exhibit A of the Order.  
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Respectfully,

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/s/ Andrew H. Schapiro

/s/ Mark C. Mao

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**ATTESTATION OF CONCURRENCE**

I am the ECF user whose ID and password are being used to file this Joint Submission.  
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has  
concurred in the filing of this document.

Dated: March 8, 2022

By /s/ Andrew H. Schapiro  
Andrew H. Schapiro  
*Counsel on behalf of Google LLC*